

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

March 15, 1985

Eric Lauterer
City Attorney
City of Garden Grove
P.O. Box 3070
Garden Grove, CA 92642

Re: Your Request for Advice;
Our No. A-85-054 (Previously
A-85-005)

Dear Mr. Lauterer:

I have reviewed the facts presented in both your January 2, 1985, letter and your February 27, 1985, letter. Unfortunately, at this stage the facts are still too vague for us to provide you with definitive advice; however, I am able to provide you with some general guidance, which should assist you and your clients (Councilman Milton Krieger and Planning Commissioner Manuel Nunes) in their avoiding potential future conflicts of interest.

Councilman Milton Krieger has entered into an agreement with Ballew & Associates, Inc. ("Ballew"), a local planning and architectural firm. He is receiving a \$500 per month consultation fee, plus a commission for any additional new business which he brings Ballew's way. Mr. Krieger will not be involved in bringing Ballew new business for Garden Grove, only for other communities in Orange County. However, Ballew apparently does some work within Garden Grove.

Planning Commissioner Manuel Nunes is also employed by Ballew and is contemplating purchasing an ownership interest in the firm. Currently, he receives a salary and fringe benefits, including a car, but no commissions.

Both Councilman Krieger and Planning Commissioner Nunes seek our advice in order to avoid potential future conflicts of interest arising from their financial relationships with Ballew.

The Political Reform Act (the "Act")^{1/} provides that no public official shall make, participate in making or use his or her official position to influence any government decision in which he or she has a financial interest. Section 87100. An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect distinguishable from the effect upon the public generally on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

* * *

Section 87103.

Both Councilman Krieger and Planning Commissioner Nunes fit into the circumstances described in subdivisions (c) and (d) with respect to Ballew. If Mr. Nunes obtains an investment interest of \$1,000 or more in Ballew, then he would also come within the provisions of subdivision (a).

Given their economic interests in Ballew, both Mr. Krieger and Mr. Nunes will be required to disqualify themselves with respect to any government decisions in Garden Grove which will have a reasonably foreseeable material financial effect upon Ballew which is distinguishable from the decision's effect upon the public generally. This is true even though they may have

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

Eric Lauterer
March 15, 1985
Page 3

had no direct involvement with the specific project or with that particular client of Ballew. For example, if a project comes before either Mr. Krieger or Mr. Nunes where Ballew is involved and where Ballew will make more money if the project is approved (or less money if it is not approved), disqualification may be required, depending upon the extent of the effect upon Ballew.

In addition, if Mr. Krieger has received commission income from one of Ballew's clients and that client has a matter before the Garden Grove City Council (whether or not Ballew is involved) he may have to disqualify himself if he has received commission income of \$250 or more in the last 12 months as a result of recruiting that Ballew client. See generally, 2 Cal. Adm. Code Section 18704.3, copy enclosed.

If Mr. Nunes becomes a 10 percent or more owner in Ballew, he will then receive a pro rata share of all gross receipts from Ballew's clients. If that becomes the case, Mr. Nunes may have to disqualify himself as to matters affecting any Ballew client where his pro rata share of that client's payments to Ballew during the past 12 months equals or exceeds \$250.

I trust that the foregoing general advice is of assistance to you and Mr. Krieger and Mr. Nunes. If a potential disqualification situation presents itself in the future, please feel free to contact us and provide us with specific facts at that time so that we may provide you with more specific advice.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

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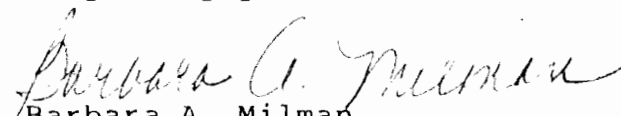
Re: A-85-054

Dear Mr. Lauterer:

Your letter requesting advice under the Political Reform Act has been referred to Robert E. Leidigh, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Barbara A. Milman
General Counsel

BAM:plh